vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.1396 OF 1995**

Ashok Narayan Sathe
Shree Shivaji Mahavidhyalay,
Barsi, Solapur ... Petitioner

V/s.

1. The Education Officer
(Secondary), Zilla Parishad
Solapur

2. The Chief Executive Officer
Zilla Parishad, Solapur

3. The State of Maharashtra

4. The General Secretary
Shree Shivaji Shikshan Prasarak
Mandal, Barsi, Dist.: Solapur

5. Tulsidas Dagadu Zalte
residing at Agalgaon, Taluka Barsi
Dist.: Solapur ... Respondents

Mr.S.G. Kudle for Petitioner
Mr.R.M. Patne, AGP, for Respondent Nos.1, 2 and 3
Mr.S.M. Mirajkar for Respondent No.4
Mr.M.A. Chaudhary for Respondent No.5

CORAM: **S.B. MHASE &**
**SMT.NISHITA MHATRE, JJ.**

DATED: **MARCH 13, 2007**

**JUDGEMENT (PER SMT.MHATRE, J.):**

. The Petitioner has challenged the order of the Education Officer (Secondary), Zilla Parishad, Solapur dated 31.12.1994 fixing the seniority and declaring the Petitioner to be junior to Respondent No.5. This decision was taken by the Education Officer after

Respondent No.5 had approached this Court by filing Writ Petition No.1717 of 1994 complaining about the fixation of his seniority. This Court had disposed off the aforesaid writ petition with specific directions to the Education Officer to decide the dispute between the petitioner and Respondent No.5 herein, regarding their inter se seniority, within a stipulated time. The Education Officer found that the grievance of Respondent No.5 was correct and that he was senior to the Petitioner. Aggrieved by this decision, the Petitioner has challenged the order.

2. The facts giving rise to the present Petition are as follows:

The Petitioner was appointed as an Assistant Teacher in the Maharashtra Vidyalaya, Barsi on 29.7.1974. At that point of time, the petitioner had the qualifications of SSC, D.Ed. In 1977, the petitioner graduated with history and achieved a second class in his examination. Thereafter he completed his B.Ed. degree in 1988 with a first class. Later, in 1990, he completed his M.A. with English and secured a second class in the examination.

3. Respondent No.5 on the other hand, was appointed

as an Assistant Teacher on 24.11.1983. When he was appointed, Respondent No.5 had already completed his M.A. in Hindi in 1972 and B.Ed. in 1976. He completed his M.A. in English in 1991.

4. When the seniority list was prepared initially, the Petitioner was shown at serial No.89 whereas Respondent No.5 figured at serial No.131 in Category C. Under Rule 12 of the MEPS Rules read with Schedule F teachers are to be categorised for fixation of seniority. Category C consists of holders of M.A./M.Sc./M.Com, B.T./B.Ed., or its equivalent; or B.A.B.T./B.Sc./B.Com., B.T./B.Ed., or its equivalent; or B.A./B.Sc./B.Com. Dip.T. (old two years course); or B.A./B.Sc./B.Com., S.T.C/Dip.Ed./Dip.T (one year course) with 10 years post S.T.C. etc. service. B.A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service: or Junior Hindi Shikshak with ten years service after obtaining both academic and training qualifications.

5. According to the Petitioner, he had completed his D.Ed. (2 years) in 1974 and this was equivalent to the B.Ed. degree. The Petitioner has, therefore, claimed that since he had already completed his D.Ed. course prior to Respondent No.5 joining the service, he

was entitled to be considered senior in category C.

6. The submission made on behalf of the Petitioner is fallacious. There is no provision in Schedule F indicating that the B.Ed degree is the same as the D.Ed qualification (2 years). In fact, Note 2 of Schedule F provides that for the purpose of category C, teachers who have completed the D.Ed. (2 years) course can be considered as having acquired training qualifications for the purpose of fixation of seniority even after 1.10.1970. Note 4 stipulates that the categories mentioned in Schedule represent the ladder of seniority and have been mentioned in the descending order.

7. Admittedly, in 1974, when the petitioner was appointed in service, he could not have been appointed in category C as he was not a graduate. It was only after he became a graduate and obtained the B.Ed degree that he qualified for category C i.e., in 1988. Although he became a graduate in 1977 and was a holder of a Diploma in Education, he could not be considered to be a trained graduate. It was necessary for him to possess both the B.A. degree as well as the B.Ed qualification to be considered as a trained graduate teacher. It was only after 1988 that he could be considered as a trained graduate teacher. The other

alternative was that the Petitioner ought to have been a graduate, holding a D.Ed (1 year course) with 10 years service. Considering these qualifications the petitioner could have been placed in category 'C' from 1984. However, Respondent No.5 was already a trained graduate teacher from the date he joined service, having completed his M.A. in 1972 and B.Ed. in 1976. Respondent No.5 was, therefore, rightly place above the petitioner in the category C. It is only on acquiring the requisite qualifications that the Petitioner would be entitled to be considered a trained graduate teacher and his seniority in category C would be reckoned from that date.

8. This question is no longer res integra. The Division Bench of this Court in the case of *Madhav G. Budhe v/s. Education Officer, Zilla Parishad, Nagpur*, **1994 Mh.L.J. 42** has considered this issue. Rules 61,63, Annexure 45 and Clause 5 of the M.P. Education Act which are parimateria with Schedule F of the MEPS Act r/w Rule 12 of the MEPS Rules framed under the MEPS Act. It was held that the initial date of appointment is of no consequence insofar as categorywise seniority is concerned. The seniority has to be reckoned from the date the teacher either achieves the qualifications required or improves his/her qualifications for being a

trained teacher.

10. In such circumstances, the submission made on behalf of the Petitioner cannot be accepted. The Petitioner did not have the requisite qualifications in 1983 i.e., when Respondent No.5 joined service, of B.A. degree and the D.Ed. with 10 years experience. In such circumstances, we are unable to accept the case made out in the Petition. The order of the Education Officer, Respondent No.1 herein, does not suffer from any infirmity and, therefore, must be upheld.

11. Petition is accordingly dismissed. Rule discharged.

(NISHITA MHATRE, J.) (S.B. MHASE, J.)